

CONTRACT #1
RFS # 501.01-41

**Department of General
Services**

VENDOR:
**Metropolitan Transit
Authority**

REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

RECEIVED

JUL 26 2006

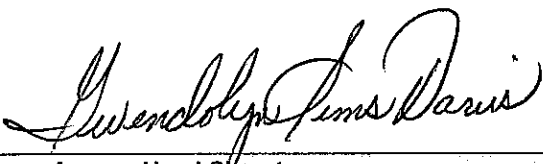
FISCAL REVIEW

Commissioner of Finance & Administration

Date:

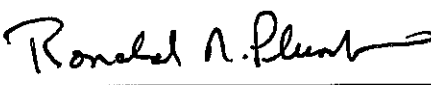
EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #	501.01-41		
2) State Agency Name :	Department of General Services		
EXISTING CONTRACT INFORMATION			
3) Service Caption :	Employee Shuttle Service		
4) Contractor :	Metropolitan Transit Authority		
5) Contract #	GU-04-03182-00		
6) Contract Start Date :			10/01/03
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :			09/30/08
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :			\$1,720,000.00
PROPOSED AMENDMENT INFORMATION			
9) <u>Proposed</u> Amendment #			One(1)
10) <u>Proposed</u> Amendment Effective Date : (attached explanation required if date is < 60 days after F&A receipt)			10/01/06
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :			09/30/08
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :			\$1,720,000.00
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state		
	<input type="checkbox"/> only one uniquely qualified service provider able to provide the service		
14) Description of the Proposed Amendment Effects & Any Additional Service :			

This request is for a one year extension of the current employee shuttle bus service contract.	
15) Explanation of Need for the Proposed Amendment :	
This service contributes to supporting a safe and cost effective work environment for State employees; therefore, the department wishes to continue the Monday through Friday, morning and afternoon shuttle bus services for State employees in downtown Nashville between employee parking lots and various State buildings.	
16) Name & Address of Contractor's Current Principal Owner(s) : (not required if proposed contractor is a state education institution)	
Metropolitan Transit Authority, 130 Nestor Street, Nashville, Tennessee 37210	
17) Documentation of Office for Information Resources Endorsement : (required <u>only</u> if the subject service involves information technology)	
select one:	<input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request <input type="checkbox"/> Documentation Attached to this Request
18) Documentation of Department of Personnel Endorsement : (required <u>only</u> if the subject service involves training for state employees)	
select one:	<input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request <input type="checkbox"/> Documentation Attached to this Request
19) Documentation of State Architect Endorsement : (required only if the subject service involves construction or real property related services)	
select one:	<input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request <input type="checkbox"/> Documentation Attached to this Request
20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :	
The department feels it is in the State's best interest to extend the current contract. In August 2003 the department received approval to secure shuttle services using the alternative procurement method. Prior to 2003 the service was secured on a sole source basis.	
21) Justification for the Proposed Non-Competitive Amendment :	
Metropolitan Transit Authority (MTA) is the current contractor and has satisfactorily provided shuttle services for State employees for approximately sixteen (16) years. The use of a non-competitive amendment will allow the department to add an additional year to the existing contract with MTA. Continued use of the contract would be in the best interest of the State.	
REQUESTING AGENCY HEAD SIGNATURE & DATE : (<u>must</u> be signed & dated by the <u>ACTUAL</u> procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)	
<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">  </div> <div style="text-align: center;"> <p style="font-size: 1.2em;">7-25-06</p> </div> </div>	
Agency Head Signature	Date

CONTRACT SUMMARY SHEET

021406

RFS #				Contract #			
501.01-41				GU-04-03182-01			
State/Agency				State/Agency Division			
Department of General Services				Property Services Management			
Contractor Name				Contractor ID # (FEIN or SSN)			
Metropolitan Transit Authority				<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 621438173-00			
Service Description				FISCAL REVIEW			
Employee Shuttle Service							
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?		CFDA #	
10/01/03		09/30/07		Vendor			
Mark Each TRUE Statement							
<input checked="" type="checkbox"/> Contractor is on STARS				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code		Cost Center		Object Code		Fund	
501.01		19504		076/337		84	
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2004			\$ 169,592.00		\$ 169,592.00		
2005			\$ 298,545.00		\$ 298,545.00		
2006			\$ 340,720.00		\$ 340,720.00		
2007			\$ 454,143.00		\$ 454,143.00		
2008			\$ 365,000.00		\$ 365,000.00		
2009			\$ 92,000.00		\$ 92,000.00		
TOTAL	\$ -	\$ -	\$ 1,720,000.00	\$ -	\$ 1,720,000.00		
COMPLETE FOR AMENDMENTS ONLY				State Agency Fiscal Contact & Telephone #			
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Ron Plumb, 741-3066				
2004	\$ 169,592.00						
2005	\$ 298,545.00		State Agency Budget Officer Approval 				
2006	\$ 340,720.00						
2007	\$ 454,143.00		Funding Certification (certification required by T.C.A. § 9-4-5113 that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)				
2008	\$ 365,000.00						
2009	\$ 92,000.00						
TOTAL	\$ 1,720,000.00	\$ -					
End Date		9/30/2006		9/30/2007			
Contractor Ownership (complete only for base contracts with contract # prefix FA or GR)							
<input type="checkbox"/> African American		<input type="checkbox"/> Person w/ Disability		<input type="checkbox"/> Hispanic		<input type="checkbox"/> Small Business	
<input type="checkbox"/> Asian		<input type="checkbox"/> Female		<input type="checkbox"/> Native American		<input checked="" type="checkbox"/> NOT disadvantaged	
						<input type="checkbox"/> OTHER minority/disadvantaged—	
Contractor Selection Method (complete for ALL base contracts—N/A to amendments or delegated authorities)							
<input type="checkbox"/> RFP		<input type="checkbox"/> Competitive Negotiation		<input checked="" type="checkbox"/> Alternative Competitive Method			
<input type="checkbox"/> Non-Competitive Negotiation		<input type="checkbox"/> Negotiation w/ Government (eg, ID, GG, GU)		<input type="checkbox"/> Other			
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)							

**AMENDMENT ONE
TO CONTRACT NUMBER GU-04-03182-01**

This CONTRACT, by and between the State of Tennessee, DEPARTMENT OF GENERAL SERVICES, hereinafter referred to as the State, and METROPOLITAN TRANSIT AUTHORITY, hereinafter referred to as the CONTRACTOR, is hereby amended as follows:

1. Delete Section B.1. in its entirety and insert the following in its place:

B.1. Contract Term. This Contract shall be effective for the period commencing on October 1, 2003 and ending on September 30, 2007. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. Delete Section B.2. in its entirety and insert the following in its place:

B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than one (1) year, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

3. Delete Section E.2. in its entirety and insert the following in its place:

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Marsha Walker-Jones, Contract Administrator
Department of General Services
Property Services Management
23rd Floor William R Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, Tennessee 37243
(615)741-5973 Phone
(615)532-2305 Fax

The Contractor:

John Cannon, Director of Scheduling Service
Metropolitan Transit Authority
130 Nestor Street
Nashville, Tennessee 37210
(615)862-6149 Phone
(615)862-6208 Fax

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt

is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

The other terms and conditions of this CONTRACT not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF,	
METROPOLITAN TRANSIT AUTHORITY:	
Paul Ballard, Chief Executive Officer	Date
CONTRACTOR Signatory Printed Name and Title	
DEPARTMENT OF GENERAL SERVICES:	
Gwendolyn Sims Davis, Commissioner	Date
APPROVED:	
DEPARTMENT OF FINANCE AND ADMINISTRATION:	
M. D. Goetz, Jr., Commissioner	Date
COMPTROLLER OF THE TREASURY:	
John G. Morgan, Comptroller of the Treasury	Date

CONTRACT SUMMARY SHEET

021406

RFS #		Contract #	
501.01-41		GU-04-03182-01	
State Agency		State Agency Division	
Department of General Services		Property Services Management	
Contractor Name		Contractor ID # (FEIN or SSN)	
Metropolitan Transit Authority		<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V-	
		621438173-00	

RECEIVED

JUL 26 2006

FISCAL REVIEW

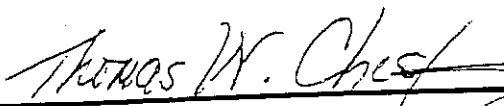
Service Description			
Employee Shuttle Service			
Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
10/01/03	09/30/06	VENDOR	

Mark Each TRUE Statement				<input checked="" type="checkbox"/> Contractor is on STARS		<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts	
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code		
501.01	19504	076/337	84				
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2004			169,592.00		169,592.00		
2005			298,545.00		298,545.00		
2006			340,720.00		340,720.00		
2007			454,143.00		454,143.00		
2008			365,000.00		365,000.00		
2009			92,000.00		92,000.00		
TOTAL:			1,720,000.00		1,720,000.00		

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Ron Plumb, 741-3066	
2004	240,230.00	<70,638.00>	State Agency Budget Officer Approval 	
2005	329,050.00	<30,505.00>		
2006	340,720.00	0		
2007	353,000.00	101,143.00		
2008	365,000.00	0		
2009	92,000	0	Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
TOTAL:	1,720,000	0		
End Date:	09/30/06	09/30/06		

Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR)				
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT minority/disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)				
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input checked="" type="checkbox"/> Alternative Competitive Method		
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (e.g., ID, GG, GU)	<input type="checkbox"/> Other		
Procurement Process Summary (complete for selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)				

CONTRACT SUMMARY SHEET

RFS Number:		Contract Number: 64-04-03182-00		
State Agency: General Services		Division: Property Services Management		
Contractor		Contractor Identification Number		
Metropolitan Transit Authority		<input checked="" type="checkbox"/> V- <input checked="" type="checkbox"/> C-	621438173-00	
Service Description				
Employee Shuttle Service				
Contract Begin Date		Contract End Date		
10/01/03		09/30/06		
Allotment Code	Cost Center	Object Code	Fund	
501.01	19504	076/337	84	
		<input type="checkbox"/> on STARS		
FY	State Funds	Federal Funds	Total Contract Amount (including ALL amendments)	
2004		240,230.00	240,230.00	
2005		329,050.00	329,050.00	
2006		340,720.00	340,720.00	
2007		353,000.00	353,000.00	
2008		365,000.00	365,000.00	
2009		92,000.00	92,000.00	
Total:		1,720,000.00	1,720,000.00	
CFDA #	Check the box ONLY if the answer is YES:			
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)		
Name:	Thomas W. Chester	Is the Contractor a VENDOR? (per OMB A-133)	X	
Address:	23 rd Floor TN Tower, WM R. Snodgrass Bldg	Is the Fiscal Year Funding STRICTLY LIMITED?	X	
Phone:	741-3066	Is the Contractor on STARS?	X	
Procuring Agency Budget Officer Approval Signature		Is the Contractor's FORM W-9 ATTACHED?		
		Is the Contractors Form W-9 Filed with Accounts?	X	
		Funding Certification		
COMPLETE FOR ALL AMENDMENTS (only)		Pursuant to T.C.A., Section 9-6-113, I, C. Warren Neel, Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.		
	Base Contract & Prior Amendments			This Amendment ONLY
FY				
FY				
FY				
FY				

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
METROPOLITAN TRANSIT AUTHORITY**

This Contract, by and between the State of Tennessee, DEPARTMENT OF GENERAL SERVICES, hereinafter referred to as the "State" and METROPOLITAN TRANSIT AUTHORITY, hereinafter referred to as the "Contractor," is for the provision of SHUTTLE BUS SERVICE FOR STATE EMPLOYEES IN DOWNTOWN NASHVILLE, as further defined in the "SCOPE OF SERVICES."

The Contractor is A NON-PROFIT CORPORATION. The Contractor's address is:

Metropolitan Transit Authority
130 Nestor Street
Nashville, Tennessee 37210

Telephone: 615-862-5969

The Contractor's place of incorporation or organization is Tennessee.

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide a State employee shuttle bus service between the hours of 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 6:00 p.m., Monday through Friday except for designated State holidays. The specific schedule as presently required is shown in Attachment A and the routes and stop times presently required are shown in Attachment B.
- A.2. The Contractor shall provide a minimum of six shuttle buses in order to meet these requirements.
- A.3. At any time during the Contract period, as a result of changing service needs or funding availability, the State, as it may deem necessary, may direct the Contractor to:
- Add or delete shuttle buses;
 - Modify, add, or eliminate service periods;
 - Change the service route for any or all shuttle buses;
 - Add, delete, or change shuttle bus stop locations;
 - Install or relocate shuttle bus shelters; and/or
 - Perform other service requests as may be mutually agreed upon by both the State and the Contractor.
- A.4. The Contractor shall provide free ridership only to State employees. Riders shall verify their status as a State employee by presenting their official State Employee Identification Card to the shuttle bus driver for inspection. The Contractor may also allow paying customers to ride on any shuttle bus, but only if space is available. State employees are to be given priority access to all shuttle buses.
- A.5. The Contractor shall be responsible for obtaining and maintaining current, all necessary permits, licenses, rights-of-way, easements, and other legal instrumentalities necessary to perform all services required under this Contract.

A.6. The State of Tennessee encourages subcontracting with small, minority and women-owned businesses.

A.7. The Contractor shall provide to the State, as part of each monthly invoice, verifiable information on the number of morning and afternoon riders by parking area serviced, the number of shuttle bus hours in service, and other statistical information as may be requested by the State on a continuing or ad hoc basis.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on October 1, 2003 and ending on September 30, 2006. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The State reserves the right to extend this Contract for two (2) additional periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed ONE MILLION, SEVEN HUNDRED AND TWENTY THOUSAND DOLLARS, (\$1,720,000). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	<u>AMOUNT</u>
10/01/03 to 09/30/04 / Unit Rate per Vehicle Hour	\$48.00
10/01/04 to 09/30/05 / Unit Rate per Vehicle Hour	\$49.75
10/01/05 to 09/30/06 / Unit Rate per Vehicle Hour	\$51.50
10/01/06 to 09/30/07 / Unit Rate per Vehicle Hour	\$53.30
10/01/07 to 09/30/08 / Unit Rate per Vehicle Hour	\$55.20

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being a Tennessee governmental entity, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101 et seq., for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly. However, as a condition of entering into this Contract with the State, the Contractor agrees to carry and produce proof thereof, adequate professional malpractice liability insurance on the Contractor's professional employees who perform any professional services under this Contract.

D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Hank Koebler, Chief Security Officer
State of Tennessee
Department of General Services
Property Services Management Division
312 8th Avenue North
615-741-9531
615-532-2305 (FAX)

The Contractor:

John Cannon, Director of Scheduling Service Planning
Metropolitan Transit Authority
130 Nestor Street
Nashville, Tennessee 37210
(615)862-6149
(615)862-6208 (FAX)

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been

paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.5. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Bid
- c. The Request for Bid and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Bid

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.6. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.

E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.8. Date/Time Hold Harmless. As required by *Tennessee Code Annotated*, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.9. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

E.10. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of

the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.12 Insurance. The insurance carrier(s) must be licensed to conduct business in the State of Tennessee. The insurance will be evidenced by an original or .pdf format document Certificate of Insurance. The Certificate shall include wording which states the Purchasing Division will be notified thirty (30) days prior to cancellation of the coverage or a major change in the coverage provided. The State of Tennessee shall be held harmless for any injuries, claims or judgements against the Contractor.

Certificates for liability coverages shall name the State of Tennessee, Purchasing Division, as an additional insured. Coverages required are:

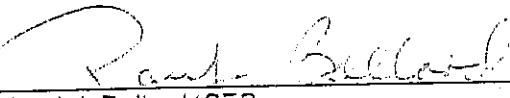
Workers' Compensation: A certificate shall be provided which indicates the Contractor provides workers' compensation coverage in compliance with the State laws of Tennessee.

General Liability and Property Damage coverage shall be for all operations under the proposal for at least \$100,000.00 for one person and \$300,000.00 for each occurrence for bodily injury or death; and for property damage at least \$100,000.00 for each occurrence, plus coverage for any equipment being moved.

The vendor to provide the Purchasing Division with an original Certificate of Insurance or .pdf format document as proof of insurance coverage, as stated above, naming the State of Tennessee, Purchasing Division, as additional insured, within ten (10) working days after request. If the Certificate of Insurance is in .pdf format, it must be received directly from the insurance company.

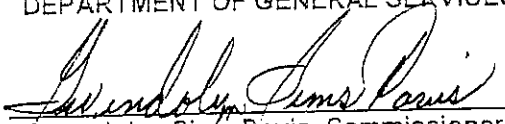
IN WITNESS WHEREOF:

METROPOLITAN TRANSIT AUTHORITY:


Paul J. Ballard, CEO

12-23-03
Date

DEPARTMENT OF GENERAL SERVICES:


Gwendolyn Sims Davis, Commissioner

12-29-03
Date

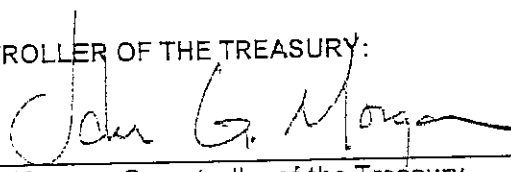
APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M.D. Goetz, Jr.
M. D. Goetz, Jr., Commissioner

1/6/04
Date

COMPTROLLER OF THE TREASURY:


John G. Morgan, Comptroller of the Treasury

1/7/04
Date